

2014-1527

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**CLEARCORRECT OPERATING, LLC, and
CLEARCORRECT PAKISTAN (PRIVATE), LTD.
Appellants,**

v.

**INTERNATIONAL TRADE COMMISSION,
Appellee,
and**

**ALIGN TECHNOLOGY, INC.
Intervenor.**

On appeal from U.S. International Trade Commission Inv. No. 337-TA-833

2014-1533

**ALIGN TECHNOLOGY, INC.
Appellant,**

v.

**INTERNATIONAL TRADE COMMISSION,
Appellee,
and**

**CLEARCORRECT OPERATING, LLC, and
CLEARCORRECT PAKISTAN (PRIVATE), LTD.
Intervenors.**

On appeal from U.S. International Trade Commission Inv. No. 337-TA-833

**CORRECTED JOINT MOTION TO COORDINATE THE BRIEFING
SCHEDULES, ORAL ARGUMENT, AND APPENDICES IN NOS. 2014-
1527 AND -1533, AND UNOPPOSED MOTION FOR EXTENSION OF
TIME FOR OPENING BRIEFS**

Appellee International Trade Commission, and appellants/intervenors Align Technology, Inc.; ClearCorrect Operating, LLC; and ClearCorrect Pakistan (Private), Ltd.¹ respectfully file this joint motion, in the interest of judicial efficiency.² Appeal Nos. 2014-1527 and -1533 both arise from the Commission's April 3, 2014, decision in Inv. No. 337-TA-833, *Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Appliances, the Appliances Made Therefrom, and Methods of Making the Same*, in which Align was the complainant and the ClearCorrect parties the respondents.

In view of the substantial factual and legal overlap between the appeals, the parties jointly request that the Court: (i) align the briefing schedules so that each round of briefing is submitted simultaneously; (ii) schedule oral argument so that the two appeals are heard on the same day as companion cases; and (iii) permit the parties to file a combined joint appendix for the two appeals, in view of the substantial overlap in appendix materials.

The parties note that alignment of briefing and companion-case treatment

¹ Align is the appellant in No. 2014-1533 and the intervenor in No. 2014-1527, while the ClearCorrect parties are the intervenors in No. 2014-1533 and the appellant in No. 2014-1527.

² The originally-filed motion filed on July 28, 2014, was rejected by the Clerk for failure to include certificates of interest. This motion has been corrected to include the certificates.

for argument appears to be the Court's ordinary preference in hearing related appeals arising from Commission investigations.³ In some Commission appeals, the joint appendices are separate, and in others they are combined between the two appeals. The parties request a combined joint appendix for the two appeals here. Doing so will spare the Court the burden of referencing, and the parties the burden of producing, separate appendices with substantially overlapping materials. Align and ClearCorrect have agreed to coordinate the preparation of an appendix, and to share the cost of the combined appendix equally.

In addition, by this motion, ClearCorrect moves for a 21-day extension of time for filing its opening brief in the 2014-1527 appeal (*ClearCorrect v. ITC*), to October 9, 2014. A declaration in support of this motion is attached hereto. The other parties do not oppose the extension. The parties agree that should this extension be granted in the 2014-1527 appeal, that the deadline for the opening brief be extended to October 9, 2014, in the 2014-1533 appeal (*Align v. ITC*), for the reasons of coordination discussed earlier.

³See, e.g., *Apple Inc. v. ITC*, No. 2012-1125 and related appeal no. 2012-1226; *Rambus Inc. v. ITC*, No. 2010-1483 and related appeal nos. 2010-1556 and -1557; *Pass & Seymour, Inc. v. ITC*, No. 2009-1338 and related appeal nos. 2009-1369, -1378, and -1434; *Applica Consumer Prods., Inc. v. ITC*, No. 2009-1292 and related appeal no. 2009-1470.

Date: July 29, 2014

Respectfully submitted,

/s/ Michael Myers/
Michael D. Myers
MCCLANAHAN MYERS ESPY, LLP
3355 West Alabama, Suite 210
Houston, TX 77098
(713) 223-2005

Counsel for ClearCorrect Operating, LLC and
ClearCorrect Pakistan (Private), Ltd.

/s/ Sidney Rosenzweig/
Sidney A. Rosenzweig
Office of the General Counsel
U.S. International Trade Commission
500 E Street, S.W.
Washington, DC 20436
(202) 708-2532

Counsel for the U.S. International Trade Commission

/Stephen Kinnaird
Stephen B. Kinnaird
PAUL HASTINGS LLP
875 15th Street, NW
Washington, DC 20005
stephenkinnaird@paulhastings.com
(202) 551-1842

Counsel for Align Technology, Inc

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ClearCorrect Operating, LLC v. ITC

No. 2014-1527

Align Technology, Inc. v. ITC

No. 2014-1533

CERTIFICATE OF INTEREST

Counsel for Align Technology, Inc. certifies the following:

1. The full name of every party or amicus represented by me is:

Align Technology, Inc.

2. The name of the real party in interest represented by me is:

Align Technology, Inc.

3. Align Technology, Inc. has no parent corporations and no publicly held company owns 10 percent or more of the stock of Align Technology, Inc.

4. The names of all law firms and the partners or associates that appeared for Align Technology, Inc. in proceedings before the United States International Trade Commission or are expected to appear in this Court, are:

PAUL HASTINGS LLP

Stephen B. Kinnaird, Thomas A. Counts, Scott M. Flicker, Ned N. Isokawa*, Elizabeth L. Brann, Igor V. Timofeyev, Timothy P. Cremen, Bob Chen, Jeffrey D. Comeau, Elizabeth Dorsi, Ryan Fabre, Alyse L. Katz*, Lisa Leung, Ryan Nier, Ericka J. Schulz, Sophie Sung, Josh Weddle*, Jamie L. Williams*, Samuel C. Zun.*

*No longer with the firm.

Date: July 29, 2014

BY: /s/Stephen B. Kinnaird
Stephen B. Kinnaird
Paul Hastings LLP
875 15th Street, N.W.
Washington, D.C. 20005
(202) 551-1700

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ClearCorrect Operating, LLC v. ITC

No. 2014-1527

Align Technology, Inc. v. ITC

No. 2014-1533

CERTIFICATE OF INTEREST

Counsel for ClearCorrect Operating, LLC and ClearCorrect Pakistan (Private), Ltd. certify the following:

1. The full name(s) of every party represented by us are:

ClearCorrect Operating, LLC

ClearCorrect Pakistan (Private), Ltd.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by us is: N/A.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by us are: N/A.
4. The names of all law firms and the partners and associates that appeared for Petitioners in the trial court or are expected to appear for Petitioners in this Court are:

Michael D. Myers, Robert H. Espey II
McClanahan Myers Espey, LLP

Gary M. Hnath; Paul W. Hughes
Mayer Brown LLP

Dated: July 29, 2014

/s/ Michael D. Myers
Michael D. Myers

CERTIFICATE OF SERVICE

I, Michael D. Myers, hereby certify that on July 29, 2014, I served the foregoing joint motion to coordinate briefing schedules via the Court's electronic filing system to:

Sidney Rosenzweig
U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436
wayne.herrington@usitc.gov
sidney.rosenzweig@usitc.gov
Counsel for U.S. International Trade Commission

Stephen Kinnaird
Igor Timofeyev
PAUL HASTINGS LLP
875 15th Street, NW
Washington, DC 20005
stephenkinnaird@paulhastings.com
igortimofeyev@paulhastings.com
Counsel for Align Technology, Inc.

/s/Michael D. Myers
Michael D. Myers